

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER BECKER,

Petitioner,

v.

WARDEN,

Respondent.

Case No. 1:21-cv-01129-NONE-EPG-HC

ORDER TERMINATING PETITIONER'S
MOTION TO DISMISS CASE

ORDER DIRECTING CLERK OF COURT
TO CLOSE CASE

(ECF No. 10)

Petitioner Christopher Becker is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On November 22, 2021, the undersigned issued findings and recommendation recommending dismissal of the petition for failure to state a cognizable claim for federal habeas relief. (ECF No. 8).

On November 29, 2021, the Court received the instant motion requesting dismissal of the case. (ECF No. 10). The Court construes the motion as a notice of dismissal. See Castro v. United States, 540 U.S. 375, 381–82 (2003) (courts may recharacterize a *pro se* motion to “create a better correspondence between the substance of a *pro se* motion’s claim and its underlying legal basis”); Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9th Cir. 2003) (courts have a duty to construe *pro se* pleadings and motions liberally).

Pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the

opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal under this rule grants a plaintiff an absolute right to dismiss without prejudice, requires no action on the part of the court, and divests the court of jurisdiction upon the filing of the notice of voluntary dismissal. See United States v. 475 Martin Lane, 545 F.3d 1134, 1145 (9th Cir. 2008) (describing consequences of voluntary dismissals pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)).

In this case, Respondent has not served either an answer or a motion for summary judgment. Thus, Petitioner’s request of dismissal was effective upon filing and without a court order pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). For the sake of clarity, in light of the notice of dismissal, IT IS HEREBY ORDERED that:

1. Petitioner’s motion requesting dismissal (ECF No. 10) is TERMINATED; and
2. The Clerk of the Court is DIRECTED to CLOSE the case.

IT IS SO ORDERED.

Dated: **December 9, 2021**

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE